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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Nevada)

THE PEOPLE,

Plaintiff and Respondent,

v.

STEPHEN MICHAEL SHADE,

Defendant and Appellant.

C059383

(Super. Ct. No.
SF07-334)

Defendant Stephen Michael Shade entered a plea of no contest to felony driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)) with three prior convictions in exchange for a state prison sentencing bid of the midterm of two years and the dismissal of the remaining counts and allegations. The court denied probation and sentenced defendant to state prison for two years. The court ordered defendant to pay various fees and fines including \$500 for the cost of the preparation of the presentence report.

On appeal, defendant challenges the court's order that he pay the cost of the presentence report, arguing that the trial

court failed to comply with the procedural requirements of a separate hearing and a determination of defendant's ability to pay. Defendant claims that the probation report, in recommending that the court order the \$500 fee, did not evaluate defendant's ability to pay. Defendant also claims that the record does not reflect that he waived his rights. Defendant further states: "More importantly, the record does not show that the trial court conducted any evaluation of [defendant's] ability to pay the cost of *probation supervision*." (Italics added.)

Prior to the imposition of fees and fines, defendant's attorney opined that defendant's ability to pay any fees and fines would be "nonexistent" and requested that the court waive some of the discretionary ones. The prosecutor commented that the list of fees and fines in the probation report "look[ed] like a too short list" and that "usually there's quite a bit more imposed."

The trial court did not order defendant to pay the cost of *probation supervision* and rightly so since defendant was sentenced to state prison. The court did order defendant to pay several fees and fines including a \$500 fee to cover the cost of the preparation of the probation report. Defendant did not object.

The People assert that defendant's claim is forfeited, arguing that defense counsel's statement at sentencing was a "plea of mercy" for a reduced number or amount of fees and fines, was not an objection to the \$500 fee imposed, and was not

an objection to the failure to comply with the procedural requirements of Penal Code section 1203.1b. We conclude that defendant's claim is forfeited.

Penal Code section 1203.1b "specifically authorizes the recoupment of certain costs incurred for probation and the preparation of . . . presentence investigations and reports on the defendant's amenability to probation" and "requires determinations of amount and ability to pay, first by the probation officer, and, unless the defendant makes a 'knowing and intelligent waiver' after notice of the right from the probation officer, a separate evidentiary hearing and determination of those questions by the court." (*People v. Valtakis* (2003) 105 Cal.App.4th 1066, 1070, fn. omitted (*Valtakis*).) Penal Code section 1203.1b applies to cases in which the court sentences a defendant to state prison. (*People v. Robinson* (2002) 104 Cal.App.4th 902, 905 (*Robinson*).)

When the court ordered defendant to pay the cost of the preparation of the probation report, he did not object or claim lack of compliance with the procedural requirements prior to imposition of the same. Thus, he has forfeited "any procedural irregularities in the trial court's order." (*Robinson, supra*, 104 Cal.App.4th at p. 906; *Valtakis, supra*, 105 Cal.App.4th at pp. 1071-1076.)

In any event, any error was harmless. The record reflects that defendant is currently able to pay the \$500 fee to cover the cost of the preparation of the probation report. The probation report reflects that defendant was expecting a

distribution from his parents' trust fund within a few months. Further, he had worked in his parents' business off and on for 30 years and was self-employed at the time of sentencing. Moreover, the other fees and fines imposed totaled only \$2,601. In the event circumstances change, defendant may seek modification. (Pen. Code, § 1203.1b, subd. (f).)

DISPOSITION

The judgment is affirmed.

NICHOLSON, J.

We concur:

SIMS, Acting P. J.

CANTIL-SAKAUYE, J.